

**House Study Bill 654 - Introduced**

HOUSE FILE \_\_\_\_\_  
BY (PROPOSED COMMITTEE  
ON JUDICIARY BILL BY  
CHAIRPERSON SWAIM)

**A BILL FOR**

1 An Act amending provisions of the uniform residential landlord  
2 and tenant Act relating to certain definitions, attorney  
3 fees, remedies, and late fees, and including applicability  
4 provisions.

5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 535.2, subsection 7, Code 2009, is  
2 amended to read as follows:

3 7. This section does not apply to a charge imposed for late  
4 payment of rent. ~~However, in the case of a residential lease,~~  
5 ~~a late payment fee shall not exceed ten dollars a day or forty~~  
6 ~~dollars per month.~~

7 Sec. 2. Section 562A.4, Code 2009, is amended by adding the  
8 following new subsection:

9 NEW SUBSECTION. 3. In any action on a rental agreement,  
10 the court may award reasonable attorney fees to the prevailing  
11 party consistent with any provisions of the rental agreement  
12 that are not otherwise prohibited by law.

13 Sec. 3. Section 562A.6, Code 2009, is amended by adding the  
14 following new subsection:

15 NEW SUBSECTION. 7A. "*Presumption*" means that the trier of  
16 fact must find the existence of the fact presumed unless and  
17 until evidence is introduced which would support a finding of  
18 its nonexistence.

19 Sec. 4. Section 562A.6, subsection 9, Code 2009, is amended  
20 to read as follows:

21 9. "*Rent*" means a payment to be made to the landlord under  
22 the rental agreement, late fees due to the landlord under the  
23 rental agreement, and amounts due to the landlord under section  
24 562A.28.

25 Sec. 5. Section 562A.9, Code 2009, is amended by adding the  
26 following new subsection:

27 NEW SUBSECTION. 5. A fee for late payment of rent shall not  
28 exceed twenty dollars per day or eighty dollars per month. In  
29 the absence of a written rental agreement, or in the case of  
30 an oral rental agreement, the late fee shall be eighty dollars  
31 after the fourth day of the month and shall not exceed that  
32 amount for the month.

33 Sec. 6. Section 562A.11, subsection 1, paragraph c, Code  
34 2009, is amended to read as follows:

35 c. Agrees to pay the other party's attorney fees, except

1 that a rental agreement may provide that attorney fees may be  
2 awarded to the prevailing party in any action on the rental  
3 agreement; or

4 Sec. 7. Section 562A.12, subsection 8, Code 2009, is amended  
5 by striking the subsection.

6 Sec. 8. Section 562A.30, Code 2009, is amended to read as  
7 follows:

8 **562A.30 ~~Waiver of landlord's~~ Landlord's right to terminate**  
9 **or assert rights.**

10 1. Acceptance of performance by the tenant that varies from  
11 the terms of the rental agreement or rules subsequently adopted  
12 by the landlord ~~constitutes~~ shall not constitute a waiver of  
13 the landlord's right to terminate the rental agreement for that  
14 breach, ~~unless otherwise agreed after the breach has occurred.~~

15 2. Failure by the landlord to promptly assert rights under  
16 this chapter shall not constitute a waiver of such rights or  
17 a waiver of such rights for any existing or subsequent breach  
18 of the rental agreement or violation of this chapter by the  
19 tenant.

20 Sec. 9. Section 562A.32, Code 2009, is amended to read as  
21 follows:

22 **562A.32 Remedy after termination.**

23 If the rental agreement is terminated by the landlord or  
24 the tenant, the landlord may have a claim for possession ~~and~~  
25 ~~for rent~~ and a separate claim for actual damages for breach of  
26 the rental agreement and reasonable ~~attorney's~~ attorney fees  
27 ~~as provided in section 562A.27.~~

28 Sec. 10. Section 562A.36, subsection 2, Code 2009, is  
29 amended to read as follows:

30 2. If the landlord acts in violation of subsection 1  
31 of this section, the tenant may recover from the landlord  
32 the actual damages sustained by the tenant and reasonable  
33 ~~attorney's~~ attorney fees, and has a defense in action against  
34 the landlord for possession. In an action by or against  
35 the tenant, evidence of a good faith complaint within one

1 year prior to the alleged act of retaliation creates a  
2 presumption that the landlord's conduct was in retaliation.  
3 The presumption does not arise if the tenant made the complaint  
4 after notice of a proposed rent increase or diminution of  
5 services. Evidence by the landlord that legitimate costs and  
6 charges of owning, maintaining, or operating a dwelling unit  
7 have increased shall be a defense against the presumption of  
8 retaliation when a rent increase is commensurate with the  
9 increase in costs and charges. ~~"Presumption" means that the~~  
10 ~~trier of fact must find the existence of the fact presumed~~  
11 ~~unless and until evidence is introduced which would support a~~  
12 ~~finding of its nonexistence.~~

13 Sec. 11. APPLICABILITY. Notwithstanding section 562A.37,  
14 this Act applies to rental agreements entered into, extended,  
15 or renewed on or after the effective date of the Act.

16 EXPLANATION

17 This bill makes several changes relating to the uniform  
18 residential landlord and tenant Act.

19 The bill strikes a provision relating to late payments under  
20 residential leases from Code section 535.2, and moves it to  
21 Code section 562A.9. The bill also increases the limitations  
22 on such late fees from \$10 per day or \$40 per month to \$20  
23 per day or \$80 per month. The bill also provides that in the  
24 absence of a written rental agreement, or in the case of an  
25 oral rental agreement, the late fee is \$80 after the fourth day  
26 of the month and shall not exceed that amount for the month.

27 The bill moves the definition of "presumption" from Code  
28 section 562A.26 to the definitions section in the uniform  
29 residential landlord and tenant Act, Code section 562A.6. The  
30 bill also amends the definition of "rent" applicable to Code  
31 chapter 562A to include late fees due to the landlord under the  
32 rental agreement and amounts due to the landlord under Code  
33 section 562A.28 for failing to maintain the dwelling.

34 The bill amends Code section 562A.11 to allow rental  
35 agreements to provide for the payment of the prevailing party's

1 attorney fees in any action on the rental agreement.

2 Current Code section 562A.12, relating to rental deposits,  
3 specifies that a court may award reasonable attorney fees to  
4 the prevailing party in any action on a rental agreement.

5 The bill strikes this provision and moves it to Code section  
6 562A.4, relating generally to the administration and  
7 enforcement of rights under the uniform residential landlord  
8 and tenant Act.

9 The bill amends Code section 562A.30 by providing that  
10 the acceptance of performance by a tenant that varies from  
11 the terms of the rental agreement or rules adopted by the  
12 landlord does not constitute a waiver of the landlord's right  
13 to terminate the rental agreement for that breach. The bill  
14 also provides that failure by the landlord to promptly assert  
15 rights under Code chapter 562A does not constitute a waiver  
16 of such rights or a waiver of such rights for any existing or  
17 subsequent breach of the rental agreement or violation by the  
18 tenant.

19 The bill specifies that following termination of a rental  
20 agreement by the landlord or the tenant, the landlord may have  
21 a claim for possession and a separate claim for actual damages  
22 for breach of the rental agreement and reasonable attorney  
23 fees.

24 The bill applies to rental agreements entered into,  
25 extended, or renewed on or after the effective date of the  
26 bill.